

**BEFORE THE INDIANACASE REVIEW PANEL**

In The Matter of J. R.	)	
Petitioner	)	
	)	
And	)	<b>CAUSE NO. 090711-76</b>
	)	
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-26-14 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

The Petitioner, J.R., attended Northview High School (Northview) until he withdrew on April 4, 2011. On the same day, he enrolled at Owen Valley High School (Owen Valley). On April 19, 2011, Petitioner and his parents, made a request with the Indiana High School Athletic Association (IHSAA) to grant limited eligibility to Petitioner by completing their portion of the IHSAA Transfer Report (Transfer Report) which listed the reason for the transfer as “educational reasons.”

On April 20, 2011, Northview, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive ineligible status under Rule 19-4 citing the transfer was primarily for athletic reasons and could involve undue influence as the transfer and contact with the Owen Valley coach was suspected. On April 29, 2011, Owen Valley, the receiving school, completed its portion of the Transfer Report citing “educational reasons” for Petitioner’s transfer and recommended that Petitioner be given limited eligibility. On April 29 2011, the Assistant Commissioner of the IHSAA determined Petitioner was ineligible until April 4, 2012 under Rule 19-4.

On or about May 3, 2011, Petitioner sought review by the IHSAA Review Committee of the Commissioner’s determination and requested limited eligibility under Rule 19-6.2. The Review Committee conducted its hearing on August 4, 2011, and issued its decision on August 15, 2011. The decision upheld the Commissioner’s determination of ineligibility.

## **APPEAL TO THE CASE REVIEW PANEL**

Petitioner appealed to the Indiana Case Review Panel<sup>1</sup> on September 7, 2011. On September 12, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On September 22, 2011, the CRP held a meeting where a quorum of members was present.<sup>2</sup> In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

### **FINDINGS OF FACT**

1. While at Northview, Petitioner participated in football and wrestling as a freshman and as a sophomore at the junior varsity level.
2. Petitioner became academically ineligible as a sophomore while at Northview and last participated in an athletic event on September 28, 2010.
3. In September 2010, Petitioner made the decision to transfer to Owen Valley before he was academically ineligible after visiting Owen Valley and talking to some students there.
4. A close personal and family friend, L.S., who also attended Northview and participated in wrestling, also planned to transfer to Owen Valley.
5. On January 27, 2011, both Petitioner and L.S. joined the Owen Valley Wrestling Club ("Wrestling Club"). Petitioner participated as a member of the Wrestling Club, but did not wrestle due to his academic ineligibility status. Petitioner attended two tournaments that same semester, the second tournament ended the day before Petitioner transferred to Owen Valley. Petitioner was a member of the Wrestling Club while enrolled at Northview and during the Northview wrestling season.

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<sup>1</sup> The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

<sup>2</sup> Six members were present at the meeting, including Mr. Pat Mapes (chairperson), Ms. Cathy Klink, Mr. Michael Golembeski, Mr. Matthew Rager, Mr. Earl Smith, Mr. Keith Pempek. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

6. Petitioner continued to attend Northview until April 4, 2011 when he withdrew and enrolled in Owen Valley, as did L.S.
7. On April 19, 2011, Petitioner and his parents submitted their portion of the Transfer Report requesting limited eligibility under Rule 19-6.2. Subsequently, Northview completed their portion of the Transfer Report requesting ineligibility for the Petitioner under Rule 19-4 while Owen Valley requested limited eligibility under Rule 19-6.2 for the Petitioner.
8. On April 29, 2011, the Commissioner determined that Petitioner was ineligible under Rule 19-4.
9. On May 3, 2011, Petitioner requested an appeal of the Commissioner's determination and again requested for limited eligibility under Rule 19-6.2.
10. On August 4, 2011, the Review Committee upheld the Commissioner's determination of ineligibility under Rule 19-4.
11. The Petitioner timely sought review by the CRP of the Review Committee's ruling.

### **CONCLUSIONS OF LAW**

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP.
3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. I.C. 20-26-14-6(c)(3).
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2),

not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See* I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.

5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” *Id.* citing *Dep’t of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association’s rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-4, any student who transfers from one school to a new school for primarily athletic reasons will not eligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school.
8. Under IHSAA Rule 19-6.2, a student who transfers without a corresponding change of residence by the student’s parents may have limited eligibility at the new school.
9. Transfer was not due to educational reasons: Petitioner performed poorly in his academics at Northview which resulted in Petitioner becoming academically ineligible to participate in sports during his sophomore year. While Petitioner was not performing

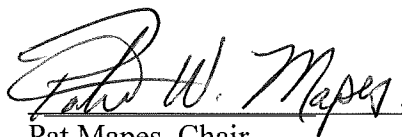
well academically at Northview, there is little evidence to support the claim that he transferred to Owen Valley for educational reasons as recorded in his portion of the Transfer Report. There is no evidence that Petitioner requested tutoring or other support from Northview to assist him in improving his grades. Therefore, Petitioner's transfer was not made for educational reasons and no academic hardship was claimed or determined under Rule 17-8.5.

10. No evidence to support finding by the Review Committee that the transfer was primarily for athletic reasons: Although Petitioner joined the Owen Valley Wrestling Club prior to transferring to Owen Valley, he was not able to wrestle at the junior varsity level because of his academic ineligibility. However, there is insufficient evidence in the record to support a finding of ineligibility under Rule 19-4. There is substantial evidence to support the fact that Petitioner most likely transferred to Owen Valley because his close friend and teammate L.S. transferred to Owen Valley at the same time.
11. Substantial evidence to support limited eligibility under Rule 19-6.2: There is substantial evidence to support the claim that Petitioner transferred to Owen Valley without a change of residence by his parents. There is substantial evidence to support the fact that Petitioner most likely transferred to Owen Valley because his close friend and teammate L.S. transferred to Owen Valley at the same time. Under Rule 19-6.2, he should receive limited eligibility as there is insufficient evidence in the record to support other motivating factors for his transfer.
12. The IHSAA decision to provide Petitioner with ineligibility for one year was arbitrary and capricious and was not supported by substantial evidence. Therefore, the IHSAA Review Committee's determination that Petitioner transferred schools primarily for athletic purposes under IHSAA Rule 19-4 is modified as substantial evidence exists to support Petitioner receiving LIMITED ELIGIBILITY under Rule 19-6.2.

#### **ORDER**

The IHSAA Review Committee order is hereby **MODIFIED by a vote of 5-0**. The Petitioner is granted **LIMITED ELIGIBILITY** until April 5, 2012.

DATE: 9-30-11

  
Pat Mapes, Chair

## Case Review Panel

### **APPEAL RIGHT**

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.